defendant and himself, but he continued to say that these accounts are wrong and that they do not show the true position because they were hiding the position from the late Ho Soon Tye. When asked why they should hide the position from the late Ho Soon Tye, he feigned a loss of memory.

At one stage after having previously taken the stand that the partnership still exists, he agreed with the defendant that in September, 1959 the partnership came to an end and that the bar and the restaurant kept separate accounts and that each bore its own respective gains or losses without recourse to the other.

In view of the spurious nature of his conduct as borne out by these revelations, and the contradictions in his evidence, little reliance can be placed on him.

I see no reason why I should not accept the defendant's story that he left the sum of $6,000 which was the amount due to him on the dissolution of the partnership in September, 1959 with the plaintiffs in order that he should be left in peace to carry on his restaurant business for so long as the hotel continued to exist and for so long as he was himself ready and willing to run the business on the usual undertaking to pay the plaintiffs ten per cent commission on his gross monthly takings.

In view of my finding that the partnership was dissolved in September, 1959 I need not concern myself with any dissolution which must have occurred at least in 1962 by virtue of the death of Ho Soon Tye who was himself a partner as the proprietor of Giam Teck Co. in March, 1959.

I have, therefore, come to the conclusion that the defendant was given an irrevocable licence to run the restaurant under an oral contract intended to be binding and supported by consideration and which was in fact acted upon.

The plaintiffs' claim is accordingly dismissed with costs and the defendant's counterclaim succeeds with costs.

Claim dismissed.

Counterclaim allowed.

Solicitors: *Cheng & Co.; Laycock & Ong.*

YAP PHAN KOOI & ANOR. v. NIBLOCK & ORS.

[F.C. (Barakbah C.J. (Malaya), Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) September 6, 1965]

[K.L. — Federal Court Civil Appeal No. 6 of 1965]

Companies — Insurance company — Winding up — Right of liquidators to determine validity of claims — Life Assurance Act, 1961 — Life Assurance Companies (Compulsory Liquidation) Act, 1962, s. 5(1).

The appellants by way of summons in chambers applied for the determination of the following questions: (a) whether the liquidators should wind up the affairs of the company as in an ordinary voluntary winding up and/or whether the provisions of the Life Assurance Company (Compulsory Liquidation) Act, 1962, apply to the said winding up; (b) whether policy holders of the company whose policies had lapsed before the coming into operation of the Life Assurance Act, 1961, should still be regarded as creditors of the company; (c) on what basis should those persons whose policies did not lapse on October 15, 1961, be paid; and (d) how should the validity of the claims received by the liquidators be ascertained and whether some representatives of the contributories or the creditors or some other independent person should be associated in the inspection and determination of the validity of such claims. The trial judge held that (a) the provisions of the Life Assurance (Compulsory Liquidation) Act, 1962, applied to the winding up of an insurance company; (b) policy holders of the company whose policies had lapsed before the coming into operation of the Act were not creditors of the company; (c) those persons whose policies did not lapse on the 15th day of October, 1961, were to be paid for an amount equal to the aggregate of the premiums paid and claimed by them under the policies; and (d) the validity of claims received by the liquidators were to be ascertained by the liquidators alone. He also ordered the costs of the liquidators to be paid by the applicants. On appeal it was contended that some representative of the contributories or some other independent person should be associated with the liquidators in the inspection and determination of the validity of each claim. The appellants also appealed against the order for costs.

Held: (1) under section 5(1) of the Life Assurance Companies (Compulsory Liquidation) Act, 1964, only the liquidators could ascertain the validity of claims received by them;

(2) the liquidators appointed by the court under the Act are officers of the court and as such should maintain an even balance between all persons whose interests are involved in the winding up; they are not appointees or agents of the competent authority and are not obliged to take directions from the competent authority nor to act on any direction from the competent authority and therefore the appeal as far as the order for costs was concerned should be allowed and the costs of all parties should be taxed and paid out of the assets of the company.

FEDERAL COURT.

N. Sharma for the appellants.

R. H. V. Rintoul for the respondents.

Wee Chong Jin C.J. (Singapore): This is an appeal against an order made by Gill J. on an application by the appellants, Yap Phan Kooi and Saw Yew Bee made by way of summons in chambers for the determination of the following questions arising in the winding-up of the Fair Insurance Company Limited (hereinafter referred to as "the company") :—

1. Whether the liquidators should wind up the affairs of the company as in an ordinary voluntary winding up and/or whether the provisions of the Life Assurance Company (Compulsory Liquidation) Act 1962 apply to the said winding up.

2. Whether policy holders of the company whose policies had lapsed before the coming into operation of the Life Assurance Act 1961 should still be regarded as creditors of the company.

3. On what basis should those persons whose policies

did not lapse on the 15th day of October 1961 be paid.

4. How should the validity of the claims received by the liquidators be ascertained and whether some representatives of the contributories or the creditors or some other independent person should be associated in the inspection and determination of the validity of such claims.

The appellants are the only two shareholders and contributories of the company which was incorporated in May 1961 under the Companies Ordinances 1940-1946 to transact the business of a life assurance company. It commenced business on the 4th June 1961.

On 11th November 1961 the Life Assurance Act 1961 came into force, section 3(1) and (2) of which provide as follows:—

"3. (1) No life assurance company shall carry on life assurance business after such date as the Minister of Finance may by notification in the *Gazette* appoint (hereinafter referred to as "the appointed date") unless there is in force a certificate by an actuary (in this section referred to as "a certificate") establishing the minimum rates of premium which are proper to be charged under policies of assurance upon human life to be issued by the company; and any person who contravenes this sub-section shall be guilty of an offence and liable on conviction to a fine of five thousand dollars or to imprisonment for a term not exceeding six months, or to both.

(2) After the appointed date no life assurance company shall issue a policy of assurance upon human life under which the premiums chargeable are less than those established by a certificate for the time being in force as respects the company; and any person who issues a policy in contravention of this sub-section shall be guilty of an offence and liable, for each policy in respect of which he is convicted, to a fine of one thousand dollars or to imprisonment for a term not exceeding six months, or to both."

Pursuant to section 3(1) the Minister of Finance duly appointed the 4th December 1961 as "the appointed date".

On 22nd February 1962 at an extraordinary general meeting of the company it was resolved by a special resolution that the company be wound up voluntarily and two liquidators Yap Hong Thin and V. Kandiah were appointed.

Meanwhile the Life Assurance Companies (Compulsory Liquidation) Act 1962 had on the 16th February 1962 been passed. Under this Act the "competent authority", who is defined to mean a person acting under the authority of the Minister having responsibility for finance, may serve on any company carrying on life assurance business at the beginning of October 1961 a notice requiring the company to furnish him with a statement of the rates of premium which the company was then charging in the course of that business and if it appears from the statement furnished that the rates of premium were not graduated according to age of the life assured at the time of the issue of the policy, or that such graduation was in any case by intervals of more than four years, the competent authority may, if he thinks fit, present a petition to the High Court for the winding-up of the company by the court in accordance with the provisions of the Companies Ordinances 1940-1946.

On 7th May 1962 a petition to the High Court for the winding-up of the company by the court was presented by the competent authority on the ground that from the statement furnished to him it appears that the rates of premium charged by the company were not graduated according to the age of life assured at the time of the issue of the policy.

On 28th May 1962 the High Court on that petition made an order "that the voluntary winding-up of the Fair Insurance Company Limited be continued but subject to the supervision of this court" and further ordered that five named persons "be jointly and severally appointed liquidators of the affairs of the company in place of Yap Hong Thin and V. Kandiah".

On 19th June 1964 the summons in chambers for the determination of the above-mentioned four questions was filed.

The numerous affidavits filed both by the appellants and by one of the liquidators appointed by the court disclose that thousands of claims had been submitted by persons claiming to be creditors by virtue of section 3(4) of the 1962 Act which provides as follows:—

"3. (4) Any person who has paid any premium under a life policy issued by the company and in force at any time after the fifteenth day of October, nineteen hundred and sixty-one, shall be a creditor in the winding-up for an amount equal to the aggregate of the premiums paid by him under the policy:

Provided that this sub-section does not apply where the policy monies have become payable before the making of the order for winding-up."

These affidavits also disclose that the liquidators acting, according to them, under section 3(4) and section 5 of the 1962 Act have admitted more than 13,000 claims and by inference that all claims so admitted have been paid in full by the liquidators to the claimants and that these payments have been made pursuant to a direction from the "competent authority" to do so.

These affidavits also disclose that the appellants allege that in accordance with section 3 of the 1962 Act a majority of the persons to whom policies had been issued by the company had ceased paying premiums since August 1961 and had preferred thereby to allow their policies to lapse and that according to them there should be no more than 6,000 claims which could be admitted.

These affidavits also disclose that the appellants were not unnaturally concerned with the procedure adopted by the liquidators in scrutinising and verifying claims submitted and that the appellants suggested the only reliable method

of verifying claims would be to call for the production of the identity card of each claimant. One of the appellants undertook to personally bear the extra expense that would be involved if such a method was adopted and offered to deposit such amount as the court may consider reasonable as security for the due performance by him of this undertaking.

From all these affidavits it seems to me quite clear that the appellants and quite properly so as the only shareholders and contributories of the company, were genuinely concerned that the liquidators should, before admitting any claim under section 3(4) of the 1962 Act and when acting under section 5, hold an impartial balance between the conflicting interests of the appellants on the one hand and the claimants on the other hand.

Gill J. before whom the application was argued in open court answered the questions raised in a written judgment on which the following order of court was formerly entered:—

"IT IS ORDERED that:—

(1) The provisions of the Life Assurance Company (Compulsory Liquidation) Act 1962 apply to the winding-up of Fair Insurance Company Limited.

(2) Policy-holders of the said company whose policies had lapsed before the coming into operation of the Life Assurance Company (Compulsory Liquidation) Act 1962 are not creditors of the said company.

(3) Those persons whose policies did not lapse on the 15th day of October 1961 are to be paid for an amount equal to the aggregate of the premiums paid and claimed by them under the policies.

(4) The validity of the claims received by the liquidators are to be ascertained by the liquidators alone.

AND IT IS FURTHER ORDERED that the costs of the liquidators be paid by the applicants."

The appellants now appeal against that part of the order which decides that the validity of claims received by the liquidators are to be ascertained by the liquidators alone and against the order as regards costs. The appellants contended before Gill J. that some representative of the contributories or some other independent person should be associated with the liquidators in the inspection and determination of the validity of each claim. These claims are in respect of premiums paid on life policies issued by the company, which policies have by virtue of section 3(2) of the 1962 Act been deemed to have been cancelled immediately before the making of the winding-up order by the court. Gill J. held that "it is for the liquidators as the duly appointed officers of the court to entertain and ascertain the validity of all claims" and that the court "has no power to direct or permit any person to be associated in the inspection and determination of claims, except by appointing him as a liquidator."

As regards the first part of question 4 in the summons in chambers as to how the validity of claims received by the liquidators should be ascertained Gill J. pointed out that section 5(1) of the 1962 Act specifically provides that the "liquidator may act on such evidence as he thinks fit where it appears to him that by reason of the inadequacy of the books and other records of the company available to him, or any other circumstances, hardship would be caused to persons claiming in the winding-up in respect of premiums paid by them if the liquidator required strict proof of such claims."

I am of the opinion that question 4 has been rightly answered. So far as the first part of question 4 is concerned the answer lies in the specific provisions of section 5(1) of the 1962 Act. So far as the second part of question 4 is concerned, and this is the real grievance of the appellants, counsel for the appellants has been unable to draw the attention of this court to any provision in the Companies Ordinances 1940-1946 enabling the court to appoint someone other than as an additional liquidator to be associated with a duly appointed liquidator in any matter arising in the winding-up of a company which has been ordered to be wound up subject to the supervision of the court where such an order was made in relation to a members' voluntary winding-up.

It may well be that on the affidavits before the court the appellants may make out a case for the appointment of an additional liquidator but that was not an issue before Gill J. on the application.

It may well be that on the affidavits before the court the appellants may make out a case that the present liquidators have failed to carry out one or more of their duties as prescribed under the Companies Ordinances 1940-1946 but that again was not an issue before Gill J. on the application.

The other matter to be dealt with is the order that the appellants should pay the liquidators' costs. The appellants, having regard to the affidavits filed by both parties in this application, have in my view reasonable grounds for bringing the questions raised before the court for its determination. Again, having regard to the contents of the affidavits filed on behalf of the liquidators, the appellants as the only contributories have in my view reasonable grounds for concern that the liquidators approach to the validity or otherwise of claims made under section 3(4) of the Act may not be in accordance with their duty to maintain an even and impartial hand between all the persons whose interests are involved in the winding up.

It cannot be too strongly emphasised that liquidators appointed by the court consequent on winding-up orders made under the 1962 Act are

nonetheless officers of the court and as such must maintain an even balance between all the persons whose interests are involved in the winding-up. They are not appointees or agents of "the competent authority" and are not obliged to take directions from the competent authority nor to act on any directions from the competent authority.

Having regard to the foregoing I would allow the appeal in so far as the order for costs is concerned and would order that the costs of all parties to this application be taxed and paid out of the assets of the company.

As regards the costs of this appeal I would apply the normal principle and as the appellants have failed on the substantial point they must pay the liquidators' costs.

Barakbah C.J. (Malaya) and **Tan Ah Tah F.J.** concurred

Order accordingly.

Solicitors: *N. Sharma; Shearn Delamore & Co.*

CHE ESAH & ANOR. v. CHE LIMAH

[F.C. (Barakbah C.J. (Malaya), Ismail Khan and Abdul Aziz JJ.) September 6, 1965]

[Kuala Trengganu — Federal Court Civil Appeal No. 119 of 1964]

Landlord and Tenant — Widow of tenant since remarried — Whether still a widow of tenant within the definition — Control of Rent Ordinance, 1956, s. 12(1).

Practice and Procedure — Application to withdraw admission by counsel — Whether this can be made orally.

The respondent obtained an order against the appellants for the surrender of vacant possession of certain premises and damages for unlawful occupation of the said premises. The appellants appealed on the ground that the first appellant was a widow of the deceased tenant and that she was therefore protected by the Control of Rent Ordinance, 1956. At the hearing counsel for the appellants applied to withdraw an admission made by their former counsel at the trial that the first appellant was no longer a widow, as she had remarried after the death of her former husband who was the tenant.

Held: (1) the first appellant was a "widow" of the tenant for the purposes of the Control of Rent Ordinance, 1956;

(2) the law applicable was the law as it existed at the date of hearing and as the tenancy was then protected by the Control of Rent Ordinance, 1956, no order for possession could be made;

(3) the admission made by the former counsel in this case was an erroneous statement of law and could be withdrawn on an oral application to the court.

Cases referred to:—

(1) *Apsley* v. *Barr* [1928] N.I. 183; 31 E. & E. Digest 666.

(2) *Hutchinson* v. *Jauncey* [1950] 1 K.B. 574.

(3) *Remon* v. *City of London Real Property Co. Ltd.* [1921] 1 K.B. 49.

(4) *State of Perak* v. *Muthukaruppan Chettiar* [1938] M.L.J. 247 at p. 256.

FEDERAL COURT.

A. Wilson for the appellants.

H. L. Wrigglesworth for the respondent.

Barakbah C.J. (Malaya): This case originated in the Sessions Court at Pasir Mas. The claim was for vacant possession of premises No. 56 Jalan Market, Pasir Mas, and damages for unlawful occupation of the said premises. The learned president ordered the defendants to surrender vacant possession of the said house. The defendants appealed against this order to the High Court, Kota Bharu, and the learned judge dismissed the appeal. They now appeal to this court.

The brief facts of the case are that the respondent (plaintiff) is the owner of the said premises. She rented it out to one Mohamed Merah on a monthly tenancy. Mohamed Merah died in 1947 leaving his widow, the first appellant, and a son, the second appellant, in occupation of the house. The first appellant remarried and went to live with her new husband at Dungun, Trengganu. During her absence, the said premises was occupied by one Packeer Mohamed till 1962 when he went back to India. According to the respondent the first appellant then resumed occupation of the said premises. This was denied by the first appellant who contended that she was in continuous occupation from the death of her husband.

At the beginning of the hearing, Mr. Wilson, counsel for the appellants, applied for permission to withdraw the admission made by Che Hashim, former counsel for the appellants, on the ground that it was an erroneous statement of law. It is on record that the said counsel submitted "I agree first defendant is no longer a widow and not protected by Control of Rent Ordinance." Mr. Wrigglesworth, counsel for the respondent, argued that the appellants had first of all to show that it was an erroneous statement of law and although he was taken by surprise he was prepared to proceed with the hearing. I agreed with Mr. Wrigglesworth and the hearing proceeded.

The first question for the decision of the court is whether the first appellant is a "widow" under the Control of Rent Ordinance 1956. Section 12(1)(i) states:

> "No order of judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —
>
> (i) where neither the tenant nor any member of his family is personally in occupation of the premises or any part thereof;"

and according to the definition of "tenant" under section 2(1) it includes "the widow of a tenant